

STATE OF DELAWARE
PUBLIC EMPLOYEE RELATIONS BOARD

ARMOND D. WALDEN,)	
Petitioner,)	
)	
V)	
)	<u>ULP No. 05-03-472</u>
)	Probable Cause Determination
WALI RUSHDAN, VICE PRESIDENT,)	
AMALGAMATED TRANSIT UNION,)	
LOCAL 842,)	
Respondent.)	

BACKGROUND

Armond Walden (“Walden” or “Charging Party”) was a public employee within the meaning of 19 Del.C. §1302(o) of the Public Employment Relations Act (“Act” or “PERA”) who was employed by the Delaware Transit Corporation (“DTC”), a public employer within the meaning of 19 Del.C. §1302(p), as a Fixed Route Driver at the time his employment was terminated in or about September, 2004.

At all times relevant to this Charge, Charging Party was a member of Amalgamated Transit Union, Local 842, (“ATU”) the exclusive bargaining representative of the Fixed Route Drivers employed by DTC within the meaning of 19 Del.C. §1302(j). Wali Rushdan, Vice President, ATU, Local 842, is the designated representative of an employee organization, within the meaning of §1302(i) of the PERA. DTC and ATU,

Local 842, are parties to a collective bargaining agreement for the period December 1, 2002 through November 30, 2007.

On March 2, 2005, Charging Party filed this unfair labor practice charge alleging violations by the Respondent of 19 Del.C. Chapter 13, specifically §1307(b)(1), (b)(2), (b)(3) and (b)(4).

In support of these alleged statutory violations Charging Party alleges that during a meeting on September 3, 2004, with management and Union representatives present, Local Union Vice President Rushdan supported management's refusal to provide copies of the written allegations against Charging Party. Copies were subsequently provided during a meeting on October 12, 2004, when requested by the International Union Vice President. According to Charging Party, the International Union Vice President chastised Local Union Vice President Rushdan for not properly representing Charging Party at the September 3, 2004, meeting.

Charging Party alleges that at a pre-termination hearing on September 21, 2004, Local Union Vice President Rushdan breached the duty of fair representation by failing to bargain in good faith with DTC on Charging Party's behalf, failing to require DTC to prove the charges against Charging Party and denying Charging Party access to the contractual grievance procedure.

Charging Party alleges that it was widely known that he intended to run for the office of Local Union President in December, 2004. Local Union Vice President Rushdan and Local Union President Herbert influenced the vote of the general membership to vote against processing Charging Party's grievance protesting his termination to arbitration. The International Union subsequently overturned the vote. Charging Party alleges the

actions by Local Union President Herbert and Local Union Vice President Rushdan evidence collusion between the Local Union and DTC.

Charging Party maintains the above conduct by the Respondent violated 19 Del.C. §1307(b)(1), (b)(2), (b)(3) and (b)(4).

On March 17, 2005, ATU filed its Answer to the Complaint denying the misconduct alleged in the Complaint. According to the Answer, Charging Party's grievance protesting his termination is scheduled for binding arbitration on June 24, 2005.

Under New Matter I, Respondent contends that because Charging Party has failed to allege sufficient facts to place the Respondent on notice regarding the nature of the alleged violations the unfair labor practice charge should be dismissed for failure to state a claim upon which relief may be granted. To the extent facts are alleged, even if accepted as true, they do not constitute the statutory violations alleged.

Alternatively, under New Matter II, Respondent contends that this unfair labor practice should be deferred to the arbitration of Charging Party's grievance protesting his termination. Respondent maintains that, "When a CBA specifically addresses the mechanism of resolving a specific dispute and that dispute has long been settled, there is no utility to nor advancement of sound public policy by having the PERB review the underlying circumstances in the context of an ULP." Delaware State University Chapter of the American Association of University Professors v. Delaware State University, 813 A. 2d 1133, 1139. (De 2002)

On April 1, 2005, Charging Party filed his Response to New Matter. As to New Matter I, Charging Party contends the facts pled in the Complaint adequately place the Respondent on notice of the charges against him.

As to New Matter II, Charging Party contends that while a resolution of the pending grievance arbitration may resolve issues between Charging Party and DTC, it will not resolve the unfair labor practice charge against Local Union Vice President Rushdan.

DISCUSSION

19 Del.C. §1303, Public Employee Rights, provides, in relevant part:

Public employees shall have the right to:

- (2) Negotiate collectively or grieve through representatives of their own choosing.
- (3) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any activity is not prohibited by this chapter or any other law of the State.
- (4) Be represented by their exclusive representative, if any, without discrimination.

Charging Party alleges and the pleadings establish probable cause to believe that a violation of 19 Del.C. §1303(2), (3) and/or (4) may have occurred. There is an underlying presumption throughout the Act that the parties will at all times conduct themselves with honesty and in good faith. The grievance protesting Charging Party's termination currently pending arbitration results from the intervention of the International Union rather than Local 842.

If Charging Party can establish that his right to grieve through representatives of his own choosing was breached, it could constitute a violation of 19 Del.C. §1303 (2). Retaliation by the Respondent for Charging Party's alleged Union activity, i.e., running for Union office, if proven, could constitute a violation of 19 Del.C. §1303 (3) and/or (4). These alleged violations are fundamental employee rights under the Act and Charging Party should have the opportunity to prove his claim.

19 Del.C. §1307, Unfair Labor Practices, provides, in relevant part:

- (b) It is an unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:
 - (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
 - (2) Refuse to bargain collectively in good faith with the public employer or its designated representative if the employee organization is an exclusive representative.
 - (3) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.
 - (4) Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting contract.

Consistent with the foregoing discussion, when construed in a light most favorable to Charging Party, the pleadings also establish probable cause to believe that a violation of 19 Del.C. §1307(b)(1) and/or (3), may have occurred.

The pleadings do not establish probable cause to believe that a violation of §1307(b)(2) or (b)(4) may have occurred. 19 Del.C. §1302(e) defines collective bargaining as, “the performance of the mutual obligation of a public employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached.” This dispute does not involve the negotiation of a collective bargaining agreement or a unilateral change in a mandatory subject of bargaining; therefore, there can be no violation of 19 Del.C. §1307(b)(2) or (b)(4), as alleged.

Concerning New Matter I, the Union’s contention that the pleadings are vague and, therefore, fail to state a claim upon which relief may be granted is unpersuasive. Although at times vague and imprecisely drafted, the Complaint is sufficient to reasonably place the Respondent on notice of the circumstances underlying the charges alleged in the Complaint.

As to New Matter II, ATU, Local 842’s contention that the unfair labor practice should be deferred to the pending grievance arbitration is unpersuasive. The essence of the Complaint filed by Charging Party alleges, inter alia, the refusal by the Union to process Charging Party’s grievances. The alleged violations go to the heart of the Public Employment Relations Act, that being the right of employees to organize, be represented fairly and without discrimination and have their grievances processed in a timely and equitable manner.

While the PERB has adopted a discretionary deferral policy, that policy does not remove from the PERB the authority to adjudicate alleged statutory violations such as are

at issue here. The issue before the PERB is not whether there has been a violation of a contractual provision or the merits of Charging Party's termination. Rather, the issue involves fundamental rights conferred upon employees by the PERA. For this reason, deferral to arbitration in this instance is inappropriate.

PROBABLE CAUSE DETERMINATION

1. Consistent with the foregoing discussion, the pleadings establish probable cause to believe that a violation of 19 Del.C. §1303(2), (3) and/or (4) and/or 19 Del.C. §1307(b)(1) and/or (b)(3), may have occurred.
2. The pleadings fail to establish probable cause to believe that a violation of 19 Del.C. §1307(b)(2) or (b)(4), may have occurred.
3. An evidentiary hearing will be scheduled for the purpose of establishing a factual record upon which a determination can be made as to whether a violation of 19 Del.C. §1303(2), (3) and/or (4) and/or 19 Del.C. §1307(b)(1) and/or (b)(3), has occurred.

IT IS SO ORDERED.

/s/Charles D. Long, Jr.
Charles D. Long, Jr.,
Executive Director

Dated: April 15, 2005